

## 2. Tax time 2016, in review

### *Reinventing the ATO*

- 2.1 The 2016 Annual Report of the Australian Taxation Office (ATO) records a period of significant progress under the ATO's Reinvention strategy. The Taxation Commissioner Mr Chris Jordan explained:

...the ATO is progressing an extensive transformation program to improve the client experience and staff experience and to change our culture. The transformation program is called Reinventing the ATO and is all about increasing levels of willing participation or, as it is sometimes called, voluntary compliance, and also about building confidence in the ATO and the tax and superannuation systems.<sup>1</sup>

- 2.2 The Commissioner reported that, over tax time 2016, the ATO had achieved on both scores; with high levels of voluntary compliance and 35 million activity statements and tax returns lodged, and complaint levels reduced by 26 per cent compared with the same time in the previous reporting period.<sup>2</sup>

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<sup>1</sup> Mr Chris Jordan, Commissioner of Taxation, Australian Taxation Office (ATO), *Committee Hansard*, Canberra, 30 November 2016, p. 8.

<sup>2</sup> During tax time July to October 2016, Commissioner Jordan, ATO, *Committee Hansard*, Canberra, 30 November 2016, p. 8.

2.3 This chapter provides an overview and update on ATO performance since the Committee's last review in February 2016 of the ATO's 2015 Annual Report.<sup>3</sup> It covers a range of matters identified for further consideration in that review:

- *Digital transition*—take-up over tax time 2016, prefilling and data matching, data integrity, security and management;
- *Engagement with tax practitioners*—consultations with tax agents and bodies, status of the Tax Agents Portal, transition to the Practitioners Lodgement Service, consultation with agents, ongoing technology issues and compensation;
- *Supports to small business*—early engagement, online and person to person supports, SuperStream, Single Touch Payroll developments, and debt management;
- *Guidance and advice*—issues around draft rulings including the backlog of old rulings;
- *Complaints handling and perceptions of fairness*—the role of fairness indicators and voluntary compliance, fairness in management of disputes and complaints handling, and in debt collection;
- *The tax and revenue gap*—the size of the tax gap and revenue impacts, the prevalence of the cash and hidden economy and large business tax avoidance; and
- *ATO performance benchmarking*—work done to assess the ATO's digital technologies and revenue collection performance compared with other nations.

2.4 As indicated in the introductory chapter, this coverage aims to provide a summary of progress and evolving issues to date. It does not provide a detailed history nor technical explanation of ATO systems and laws other than necessary for evaluation of recent developments in tax administration.

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<sup>3</sup> House of Representatives (HoR) Standing Committee on Tax and Revenue, *2015 Annual Report of the Australian Taxation Office*, First Report, April 2016.

## Digital transition

2.5 The digital transformation of the ATO's lodgement processes aims to promote voluntary tax and superannuation compliance by making it 'less complicated and stressful for the community'.<sup>4</sup> The ATO has advised that over the 2015–16 reporting period 'most people' could interact efficiently with the Tax Office online:

- For those with simple tax affairs, the system offers a '100 per cent digital interaction' with the ATO with taxpayers using myDeductions, myTax and online tracking of returns.<sup>5</sup>
- For businesses, the ATO had addressed problems with the Single Touch Payroll system,<sup>6</sup> while the introduction of SuperStream, for processing superannuation payments, has made compliance easier.<sup>7</sup>
- For tax professionals, improvements to the Tax Agents Portal and the launching of the Practitioner Lodgement Service (PLS) for Tax Time 2016, with full transition from the Electronic Lodgement Service (ELS) in March 2018, will support improved interaction with the ATO.<sup>8</sup>

### The digital by default agenda

2.6 The Digital by Default initiative was one of three core reforms to ATO services introduced by Government in the 2015–16 Federal Budget.<sup>9</sup> The proposal aimed to progressively establish digital interaction as the main method for provision of information and lodgement of payments for

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<sup>4</sup> ATO, *Submission 1*, p. 6.

<sup>5</sup> ATO, *Submission 1*, p. 6.

<sup>6</sup> Mr Peter Strong, Chief Executive Officer, Council of Small Business Organisation of Australia (COSBOA), *Committee Hansard*, Canberra, 30 November 2016, p. 1.

<sup>7</sup> ATO, *Tax Commissioner's Annual Report 2015–16, Volume 1 (Vol.1)*, p. 24.

<sup>8</sup> The original date planned was March 2017, ATO, *Submission 1*, pp. 20–21.

<sup>9</sup> Associated measures were improvements to data and analytics infrastructure and streamlining of income tax returns through the myTax system for taxpayers with more complex tax affairs. See 'Reducing Red Tape—Reform to the Australian Taxation Office', see Budget 2015, Part 2: Expense measures <[www.budget.gov.au/2015-16/content/bp2/html/bp2\\_expense-21.htm](http://www.budget.gov.au/2015-16/content/bp2/html/bp2_expense-21.htm)> viewed 20 December 2016.

taxpayers, while maintaining support for those ‘unable to transition’.<sup>10</sup> The ATO’s submission advised:

The ATO recognises that transitioning to digital is not just about providing services for the community to interact with the ATO digitally. That is why we are supporting people who need assistance in transitioning to digital services and we will continue to support those who are unable to utilise digital services.<sup>11</sup>

2.7 Accordingly, the ATO uses risk-based analytics to identify and tailor appropriate supports to taxpayers, according to need.<sup>12</sup>

- For those requiring tailored online assistance, the ATO has introduced the ‘Show me’ tool to direct clients to new products and services and Alex the Virtual Assistant, which helps with less complex enquiries. A webchat facility addresses more complex online questions, with a new successful screen share function incorporated in mid-October 2016.<sup>13</sup>
- For people who cannot use digital channels, the ATO’s ‘high touch’ approach involves face to face interactions for individuals and businesses at shopfronts and pop-up offices and through field services visits, and information groups such as the Small Business Community Engagement workshops.<sup>14</sup>

2.8 The Committee asked the ATO about specific assistance provided to sectors of the community identified as being less likely to support or have ready access to digital services – Australians in rural and remote areas, older people, and those with lower incomes or education levels.<sup>15</sup>

2.9 The ATO advised of a suite of supports to regional Australians, through the Tax Help program, pop up offices, schools program, a network of third

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<sup>10</sup> Australian Government, ATO, *Digital by Default Consultation Paper*, November 2015, p. 3.

<sup>11</sup> ATO, *Submission 1*, p. 6.

<sup>12</sup> ATO, *Submission 1.3*, pp. 5–6.

<sup>13</sup> With 2 000 webchats and 300 screen shares recorded since the function was introduced.  
See ATO *Submission 1*, p. 7.

<sup>14</sup> ATO, *Submission 1*, pp. 7–8, 9.

<sup>15</sup> See Digital Transformation Agency and Digital by Default (2015) research. ATO, *Submission 1*, p. 7.

party providers and the Department of Human Services' Mobile Service Centre trucks. Telephone services such as SMS reminder messages and one to one calls are also used to keep rural and remote clients informed, while face to face, paper and telephone lodgement options will be maintained where needed.<sup>16</sup>

- 2.10 Many of these services also assist people with a disability, older people and migrants. The ATO's Tax Help Service, for example, deploys skilled volunteer staff from the community to assist taxpayers, with pop-up shops located in key migrant areas, and education seminars conducted by key migrant service providers. In 2016 Tax Help assisted taxpayers with over 24 000 lodgements (with a further 3 000 interactions) from 613 centres across the country by 818 volunteers.<sup>17</sup>
- 2.11 Telephone support also continues to play an important role nationally, with over 2.8 million calls received over tax time 2016 tax.<sup>18</sup>

## **Electronic lodgements in 2016**

- 2.12 The ATO considered tax time 2016 to be a digital processing success with myTax online lodgements, as at 16 October 2016, up by nine per cent on the previous tax year.<sup>19</sup> Further, by 18 November 2016, most returns—97 per cent of all individual returns, 92 per cent of non-individual returns, and 83 per cent of activity statements—had been lodged electronically with the ATO.<sup>20</sup>
- 2.13 As discussed below there were, however, some difficulties experienced with the digital service over tax time 2016. The accuracy of prefilled information, fears about data matching, lodgement disruptions through myGov and questions about data security were covered in the media and discussed in evidence during the period of review.

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<sup>16</sup> ATO, *Submission 1.3*, pp. 5–6.

<sup>17</sup> ATO, *Submission 1.3*, p. 5.

<sup>18</sup> ATO, *Submission 1*, p. 8.

<sup>19</sup> ATO, *Submission 1*, p. 10.

<sup>20</sup> ATO, *Submission 1*, p. 6.

## *Data management and security*

- 2.14 The ATO has stated that ‘the growth of digital interaction, greater automated processing of exceptions and the more effective allocation of staff is speeding up tax return processing’.<sup>21</sup> However, the reliance on digital processing also increases client expectations of efficiencies, which can be offset by system overloads and errors.<sup>22</sup>
- 2.15 During tax time in 2015 system technical overloads were reported.<sup>23</sup> This year, a ‘short disruption’ to the myTax service occurred at tax time.<sup>24</sup> Later, in mid-December 2016 there was a sustained outage of ATO’s internal data and all customer service systems, followed by related service issues in early February 2017.<sup>25</sup> The ATO advised that, as well as an internal inquiry into the matter, it had appointed Price Waterhouse Coopers (PwC) to conduct an independent review of the causes, responses and risks of the outages, and to identify methods to mitigate these events in future. The Review would report back to the ATO in March 2017.<sup>26</sup>
- 2.16 During the year, events on Census night,<sup>27</sup> and the release of the Australian Cyber Security Centre’s *2016 Threat Report*, drew attention to the potential risks to the security of government held data posed by external

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<sup>21</sup> ATO, *Tax Commissioner’s Annual Report 2015–16, Vol. 1*, p. 36.

<sup>22</sup> ATO, *Tax Commissioner’s Annual Report 2015–16, Vol. 1*, p. 85.

<sup>23</sup> ATO, *Tax Commissioner’s Annual Report 2015–16, Vol. 1*, p. 36.

<sup>24</sup> Name Withheld, *Submission 5*, Attachment, R Myer, ‘Online Tax Returns hit by Cyber Attack’, *The News Daily*, 4 November 2016 and see N Towell, ‘ATO Fumes after Cyber Criminals Attack myGov Portal during Last Days of Tax Time 2016’, *Canberra Times*, 4 November 2016.

<sup>25</sup> See Commissioner’s statements over December 2016 to February 2017, at ATO Systems Update, <[www.ato.gov.au/Media-centre/Media-releases/ATO-systems-update/](http://www.ato.gov.au/Media-centre/Media-releases/ATO-systems-update/)> and see N Towell, ‘Public Servants Sit Idle as ATO’s IT Melts Down’, *Sydney Morning Herald*, 14 December 2016 <[www.smh.com.au/national/public-service/thousands-of-public-servants-sit-idle-as-atos-it-melts-down-20161213-gt9xfd.html](http://www.smh.com.au/national/public-service/thousands-of-public-servants-sit-idle-as-atos-it-melts-down-20161213-gt9xfd.html)> viewed 5 January 2016.

<sup>26</sup> ATO, *Submission 1.3*, p. 7.

<sup>27</sup> Attributed to failure of Australian Bureau of Statistics geo-blocking services, see *ABC News*, ‘Census: How the Government says the Website Meltdown Unfolded’, 10 August 2016 <[www.abc.net.au/news/2016-08-10/census-night-how-the-shambles-unfolded/7712964](http://www.abc.net.au/news/2016-08-10/census-night-how-the-shambles-unfolded/7712964)> viewed 13 February 2017.

cyberattacks.<sup>28</sup> Tax agents also identified cybersafety as a major issue for businesses in the digital economy.<sup>29</sup>

2.17 The ATO advised that a key initiative for industry consultation on tax and cyber security threats was the establishment in early 2016 of the ATO's Cyber Security Working Group (CSWG). The group is comprised of the accounting associations, tax professional bodies and the Australian Business Software Industry Association (ABSIA).<sup>30</sup> Other initiatives include an online communications plan for fraud and online security messaging, implementation of minimum requirements for software products and supporting systems to protect business information. The Software Industry Partnership Office (SIPO) is also managing information incidents identified by software providers for the ATO.<sup>31</sup>

2.18 Tax agents expressed confidence in ATO credentials on cybersafety to date.<sup>32</sup> At hearings Mr Michael Croker, Tax Leader Australia, Chartered Accountants Australia and New Zealand (CAANZ) particularly commended the ATO's work addressing phishing scams and ransomware, considering tax agents could assist in educating clients about these threats.<sup>33</sup> Tax professional bodies also spoke positively of their engagement with ATO through the CSWG.<sup>34</sup>

2.19 CPA Australia reported on joint work to 'ensure there is widespread awareness of the risks and encouragement on all sides that appropriate risk

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<sup>28</sup> The report advised that 'Australian government networks are regularly targeted by the full breadth of cyber adversaries', with 1 095 cyber security incidents on government systems. See Australian Government, *ACSC Australian Cyber Security Centre 2016 Threat Report*, p. 10.

<sup>29</sup> CPA Australia, *Submission 2*, pp. 1–2, Chartered Accountants Australia and New Zealand (CAANZ), *Submission 3*, p. 3.

<sup>30</sup> ATO, *Submission 1.3*, p. 14.

<sup>31</sup> ATO, *Submission 1.3*, p. 14–15.

<sup>32</sup> CAANZ, *Submission 3*, p. 3.

<sup>33</sup> Mr Michael Croker, Tax Leader Australia, CAANZ, *Committee Hansard*, Canberra, 23 November 2016, p. 3

<sup>34</sup> CPA Australia, *Submission 2*, p. 2; CAANZ, *Submission 3*, p. 4.

mitigation strategies are employed/ put in place.<sup>35</sup> CAANZ highlighted key initiatives to:

- Publish common sense cyber security safeguards, for tax and Business Activity Statement (BAS) agents and their clients
- Establish a rectification procedure whereby agents and the ATO (or other tax-related stakeholders) collaborate quickly and effectively to address cyber breach incidents.<sup>36</sup>

### *Prefilling and data matching*

2.20 ATO statistics suggest that it achieved greater efficiency in pre-filling data in 2016 compared to previous years—more data was made available sooner allowing for returns to be lodged earlier. The submission reports:

- By 15 July 2016, the ATO had received 57.6 million pre-fill records in comparison to 47 million records at the same time in 2015—an increase of almost 20 per cent.
- By 26 July 2016, the ATO had received all available welfare data, most private health insurance data and over 80 per cent of interest, dividend and term deposit data, representing the majority of...pre-fill data types.<sup>37</sup>

2.21 The ATO highlighted the role of its extensive data matching networks in achieving this outcome, with 600 million transactions conducted. While there were isolated delays,<sup>38</sup> the ATO notes that financial institutions and many large employers had provided information well in advance of industry deadlines.<sup>39</sup>

2.22 The ATO also uses data matching of information to identify incorrect reporting for individual tax returns, with debt letters issued if the discrepancy is greater than \$200.<sup>40</sup> Media coverage in early 2017 drew

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<sup>35</sup> CPA Australia, *Submission 2*, p. 2.

<sup>36</sup> CAANZ, *Submission 3*, p. 4.

<sup>37</sup> ATO, *Submission 1*, p. 11.

<sup>38</sup> Medicare Private. The ATO notes that this was resolved by 24 August 2016, when 80 per cent of the information had been prefilled ATO, *Submission 1*, p. 12.

<sup>39</sup> ATO, *Submission 1*, p. 12.

<sup>40</sup> ATO, *Submission 1*, p. 12.



attention to concerns about this process in relation to debt letters being issued to Centrelink Welfare recipients, where ATO data matching had indicated discrepancies between its records and Centrelink declared incomes.<sup>41</sup> Inaccuracies in the collation and interpretation of prefilled information had allegedly caused these discrepancies in many reported cases.<sup>42</sup>

- 2.23 The accuracy of the prefilled data was raised as a concern during this inquiry. A tax agent asserted colleagues' experience that prefilled information on myTax 'had many errors and omissions' and was 'difficult to change and correct'. The submitter cited research by H&R Block (released in mid-October 2016) which had suggested that two thirds of self-lodged assessments had errors which favoured the ATO. He also raised the prospect of revenue loss from inaccurate medicare, overseas resident status and capital gains declarations, made by self-lodgers using myTax.<sup>43</sup>
- 2.24 The ATO advised that it is working closely with stakeholders across the community 'to help individuals understand their tax obligations and entitlements'. Improved technology has enhanced the quality and volume of the data prefilled which, it suggested, also improves the accuracy of data in self-lodged returns. In addition:

In myTax 2016 we introduced real time prompting that encourages taxpayers to review their deduction claims where they are higher than expected.

We have sophisticated analytical rules in place that scrutinise every tax return to identify unusual, inaccurate and fraudulent claims, prior to refunds issuing. We also use data matching techniques to identify discrepancies and compare

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<sup>41</sup> A Anderson, 'Centrelink: Social Services Minister Christian Porter defends Debt Recovery System' <[www.abc.net.au/news/2017-01-03/christian-porter-defends-centrelink-debt-recovery-system/8158286](http://www.abc.net.au/news/2017-01-03/christian-porter-defends-centrelink-debt-recovery-system/8158286)> viewed 5 January 2016.

<sup>42</sup> P Martin, 'Centrelink's Robo-Debate is a Litany of Inhuman Errors', *The Age*, 4 January 2017 <[www.theage.com.au/comment/centrelinks-robodebate-is-a-litany-of-inhuman-errors-20170103-gtl77k.htm](http://www.theage.com.au/comment/centrelinks-robodebate-is-a-litany-of-inhuman-errors-20170103-gtl77k.htm)>; T McLroy, 'What Caused the Controversy at Centrelink?', *The Age*, 4 January 2017 <[www.theage.com.au/federal-politics/political-news/what-has-caused-the-controversy-for-centrelink-20170104-gtlqh1.html](http://www.theage.com.au/federal-politics/political-news/what-has-caused-the-controversy-for-centrelink-20170104-gtlqh1.html)> viewed 5 January 2016.

<sup>43</sup> Name Withheld, *Submission 5*, pp. 2–3 and see Attachment: 'K Taurian, 'Majority of myTax Returns Inaccurate Study Finds', *Accountants Daily*, 15 November 2016.

taxpayer claims with their peers to identify those that are higher than expected which we then examine more closely.<sup>44</sup>

## Engagement with tax practitioners

- 2.25 At hearings in February 2016, peak tax practitioner bodies had felt uncertain about the future of their profession, given the Government had prioritised investment in the myTax and myGov based self-lodgement systems.<sup>45</sup>
- 2.26 During this review, tax practitioners announced that their former concerns had largely been addressed.<sup>46</sup> CPA Australia's Head of Policy Mr Paul Drum, for example, considered the Tax Commissioner's recommendation that those who missed the online lodgement deadline in October 2015 should go to a tax agent, as a landmark in the profession's relationship with the ATO. Instead of the expected decline in clients under new self-lodgement systems, consultations with tax agents had increased over the last twelve months, Mr Drum said.<sup>47</sup>
- 2.27 Representatives of the Tax Institute and CAANZ also expressed satisfaction in a perceived new 'openness' in the relationship, with ATO resources now being dedicated to address tax agents' issues.<sup>48</sup> The ATO submission confirmed that tax agents are now regarded as integral partners in the design of tax agents portals and lodgements systems, with a focus 'on providing the right services while mitigating costs to tax practitioners'. Key to this is the delivery of design solutions that are 'incrementally informed by the agents themselves'.<sup>49</sup>

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<sup>44</sup> ATO, *Submission 1.3*, p. 6.

<sup>45</sup> Mr Tony Greco, General Manager, Technical Policy, Institute of Public Accountants, *Committee Hansard*, Canberra, 10 February 2016, p. 4.

<sup>46</sup> Mr Paul Drum, Head of Policy, CPA Australia; Mr Arthur Anathasiou, [former] President, and Ms Stephanie Caredes, Tax Counsel, The Tax Institute and Mr Croker, CAANZ, *Committee Hansard*, Canberra, 23 November 2016, p. 2–3.

<sup>47</sup> Mr Drum, CPA Australia, *Committee Hansard*, Canberra, 23 November 2016, pp. 2, 5.

<sup>48</sup> Mr Drum, CPA Australia; Mr Anathasiou, The Tax Institute and Mr Croker, CAANZ, *Committee Hansard*, Canberra, 23 November 2016, pp. 2–3.

<sup>49</sup> ATO, *Submission 1*, p. 17.

- 2.28 The ATO's pilot Agent's Visit Program was considered to be central to the process, acting both as an aid to implementation and initial source of feedback on 'irritants, concerns and ideas' for the enhancement of the ATO portals.<sup>50</sup> Mr Drum felt that that access to qualified ATO staff was also invaluable to address systems issues for agents.<sup>51</sup> Mr Anathasiou reported: 'They are now prepared to come out to the agents directly and work with the agents on whatever problems the agents have—they are fixed on the spot.'<sup>52</sup>
- 2.29 Another advance was the ATO's rationalisation of consultative fora for tax professionals. Commissioner Jordan advised these were reduced from 68 to eight, with 'high level, genuine stewardship committees' now feeding advice into a 'consultation hub'.<sup>53</sup> Mr Drum referred to the formation of the ATO Practitioner Advisory Group:

Getting some of the very best practical experience and hands-on experience and bringing that to the table and being able to include that in the conversation is going to lead and does lead and has led to much better outcomes across the board. There is an example of a transformation—and maybe that is a transmutation. It has been quite an epiphany moment and a big change in how we engage with the tax office in this regard.<sup>54</sup>

## Tax agents portal

- 2.30 During the last review, the Committee recommended that the Tax Office report on the planned time frames for the transition to the new Tax Agent's Portal. (Recommendation 1). The ATO's submission to this review provides a detailed outline, which involves increasing software services and improving online services from December 2016 to tax time 2017.<sup>55</sup>

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<sup>50</sup> Introduced in early 2016 as a pilot under the 'Show Me What How and Why' program, see ATO, *Tax Commissioner's Annual Report 2015–16, Vol. 1*, p. 35; and ATO, *Submission 1*, p. 17.

<sup>51</sup> Mr Drum, CPA Australia, *Committee Hansard*, Canberra, 23 November 2016, p. 2.

<sup>52</sup> Mr Anathasiou, The Tax Institute, *Committee Hansard*, Canberra, 23 November 2016, p. 2.

<sup>53</sup> Commissioner Jordan, ATO, *Committee Hansard*, Canberra, 30 November 2016, p. 11.

<sup>54</sup> Mr Drum, CPA Australia, *Committee Hansard*, Canberra, 23 November 2016, p. 6.

<sup>55</sup> ATO, *Submission 1*, p. 20. The official Government Response to the report, however, remains outstanding at the time of writing.

- 2.31 Notably, instead of exiting old systems, the ATO advises it will improve online services (new portals) by trialling a pilot/beta in production *alongside* the existing agent portals. The new online services for agents will be released in three phases:
- Pilot phase 1 / private beta is scheduled for release on 25 November 2016 – Six agents have been invited to trial the new site...The number of agents participating will be increased to 20 agents in February/March 2017.
  - Pilot phase 2 / public beta is planned for April/May 2017— Online services for agents will be open for all agents to trial and provide feedback.
  - Tax Time 2017—Online services for agents will become the default offering from 1 July. Legacy Tax and BAS agent portals will continue to be accessible.
  - Decommissioning of the existing portals will commence at a later date which is still to be determined.<sup>56</sup>
- 2.32 While the continuation of parallel systems was seen to be desirable to offset risks and negative effects, some agents were not impressed. A submitter asserted that the Tax Agents Portal ‘continues to be unreliable’, suggesting that constant upgrades, shifts in implementation dates of new systems, and ongoing glitches and outages were causing uncertainty and imposing administrative burdens on tax professionals.<sup>57</sup>
- 2.33 Significant downtime and deteriorated functioning for the Tax Agent Portal, BAS Portal and Business Portal over recent months exacerbated these frustrations, particularly as the functionality of the Australian Business Register and BAS portal, for example, remained limited after restoral of other critical systems.<sup>58</sup>
- 2.34 At hearings for the 2015 annual report review in February 2016, CPA Australia had called on the ATO to budget for compensations to tax professionals affected by disruptions and delays associated with the

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<sup>56</sup> ATO, *Submission 1*, p. 20.

<sup>57</sup> Name Withheld, *Submission 5*, pp. 5–6.

<sup>58</sup>The Commissioner of Taxation referred to the events in December as the ‘worst unplanned system outage in recent memory’ and the ATO made commitments that overdue BAS would not attract ‘penalties, interest or follow up action’, if lodged by 10 January 2017, see Media Statements, 16 and 20 December 2016 <[www.ato.gov.au/Media-centre/Media-releases/ATO-systems-update/](http://www.ato.gov.au/Media-centre/Media-releases/ATO-systems-update/)> viewed 20 December 2016.

transition process.<sup>59</sup> A submitter to the current review advised of his attempts to receive compensation on a claim of defective administration by the ATO of the Tax Agents Portal in 2104.<sup>60</sup>

- 2.35 The Committee notes that the Inspector-General of Taxation, in his recent report into the Taxpayer's Charter and Taxpayer Protections, has called on the ATO to consider budgeting for potential compensatory payments relating to outages and delays.<sup>61</sup> The ATO advised in response, however, that the ATO General Counsel currently has a centrally managed budget allocation for compensation purposes, making dedicated allocation unnecessary.<sup>62</sup>

### **Practitioner lodgement service**

- 2.36 The Practitioner Lodgement Service (PLS) is intended as the primary interaction point for agents to lodge returns and other reports, and was launched for use during tax time 2016. The Annual Report for 2015–16 provides:

The practical benefit for tax practitioners is a streamlined process that avoids the need to switch and transfer information between systems. The PLS is more interactive, enabling ATO-held data such as tax history and third-party data to be fed into the tax agent's systems. Changes that tax agents make to their client lists will also be reflected instantly.<sup>63</sup>

- 2.37 The PLS will replace the existing Electronic Lodgement Service (ELS). The ATO had planned for full transition to the PLS by 31 March 2017. However, on advice from software developers and some tax practitioners, full

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<sup>59</sup> Mr Paul Drum, Head of Policy, CPA Australia, *Committee Hansard*, Canberra, 10 February 2016, pp. 4, 2.

<sup>60</sup> Mr Richard Wytkin, *Supplementary Submission 4.1*.

<sup>61</sup> Inspector-General of Taxation, *Review into the Taxpayer's Charter and Taxpayer Protections*, December 2016, para 4.52.

<sup>62</sup> ATO, *Submission 1.3*, p. 12.

<sup>63</sup> ATO, *Commissioner of Taxation Annual Report 2015-16, Vol. 1*, p. 35.

conversion will now not take place until March 2018, with the ELS to continue as a back-up channel for individual income tax returns.<sup>64</sup>

- 2.38 The ATO advises that the PLS uses the Standard Business Reporting (SBR) language and format, and will enable tax agent and BAS agent portals who are SBR enabled to interact with the government and clients through a single and secure digital entry point.<sup>65</sup> The submission acknowledges that the transition to an SBR only lodgement platform presents ‘a major challenge’ for both tax professionals and software developers.<sup>66</sup> However,

Progressively removing return forms from the Electronic Lodgement Service allows greater flexibility for software developers to smoothly transition their remaining tax agent customers to the Practitioner Lodgement Service throughout 2017.<sup>67</sup>

- 2.39 The ATO will also introduce a second lodgement gateway to reduce risk of overload to handle peak lodgement volumes, as identified by software developers of the PLS for 2017 tax time.<sup>68</sup>

## **Client communication list**

- 2.40 Major problems were reported in the Committee’s last review of the Tax Agent Portal’s Client Correspondence service (now the Client Communication List). In particular, ATO notifications had been sent direct to clients through myGov. This process, as the Tax Institute suggested, caused: ‘a disintermediation of, or disconnection with, tax agents’, and a loss of confidence in their management of client affairs.<sup>69</sup>

- 2.41 The ATO advised that, since February 2016, it has enhanced the client correspondence list functionality in the tax agent portal, also extending the

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<sup>64</sup> ATO, *Submission 1*, p. 21.

<sup>65</sup> ATO, *Commissioner of Taxation Annual Report 2015-16, Vol. 1*, p. 35.

<sup>66</sup> ATO, *Submission 1*, p. 21.

<sup>67</sup> ATO, *Submission 1.3*, p. 12.

<sup>68</sup> ATO, *Submission 1*, p. 22.

<sup>69</sup> Mr Arthur Athanasiou, [former] President, The Tax Institute, *Committee Hansard*, Canberra, 10 February 2016, p. 3, and see Name Withheld, *Submission 5*, p. 3.

service to BAS agents from 29 April 2016. Ongoing refinements of the rebadged service aim to ensure agents have access to all correspondence received by a client tax payer through myGov.<sup>70</sup> A new Communication Preferencing function will also allow agents to prioritise categories of information to be notified from the myGov account.<sup>71</sup>

2.42 However, a tax agent submitter was very dissatisfied with these refinements. He considered that the CLS function still does not provide tax professionals with information on legacy documents or full advice on matters such as late lodgement of clients' tax returns. Instead, it imposes a substantial administrative burden on agents as each client account must be individually calibrated.<sup>72</sup>

2.43 The ATO advised that it continues to evolve the design of the CLS with advice from tax professionals with recent developments being:

- increased content being provided via the Client Communication List, including emails and SMS messages sent directly to taxpayers
- improved naming standards for items of correspondence to make items easier to identify
- capacity to view up to 5 years of communication for individual taxpayers online
- improved search facilities that allow practices at the click of one button to see what new correspondence has been issued by the ATO to taxpayers on a day by day basis
- an ability to search on correspondence sent to those taxpayers that have linked their myGov mailbox to the ATO.<sup>73</sup>

## Late lodgement rule

2.44 At the last review, there was some discussion of the 85 per cent lodgement rule which applies to tax practitioners' lodgement of tax returns. At issue

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<sup>70</sup> ATO, *Submission 1*, pp. 18–19, and see *Commissioner of Taxation Annual Report 2015-16, Vol. 1*, p. 34.

<sup>71</sup> ATO, *Submission 1*, p. 21.

<sup>72</sup> Name Withheld, *Submission 5*, pp. 3–4, and supplementary advice from the author.

<sup>73</sup> ATO, *Submission 1.3*, p. 11.

was the problem of clients who did not provide the necessary information on time, and the consequent threat of an agent being deregistered.<sup>74</sup>

2.45 Responses at the time from the Inspector-General of Taxation Mr Ali Naroozi<sup>75</sup> and Mr Tony Greco of the Institute of Public Accountants<sup>76</sup> had indicated that concerns had been resolved. However, a tax agent writing to the current review provided many objections to the rule which he considered distorted the agent–client relationship, through:

- the ATO’s arbitrary calculation of the percentage, with outstanding returns from the previous tax year influencing current year assessment;
- targeting agents who assist taxpayers who have many outstanding tax returns, and
- alienating some 700 000 others through the ATO suggesting agents purge non-compliant clients from their lists (in 2011 and 2012) in order to meet the 85 per cent target.<sup>77</sup>

2.46 The submitter also remarked the ATO’s failure to report on the number of taxpayers who disengaged from the tax system as a consequence of the purge since the last review, nor on the percentage of agents who managed to meet the lodgement rule.<sup>78</sup>

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<sup>74</sup> HoR Standing Committee on Tax and Revenue, *2015 Annual Report of the Australian Taxation Office*, First Report, April 2016, p. 16.

<sup>75</sup>The Inspector-General advised that he had called for the ATO to consider the circumstances of the agent and the client in each case, and considered the matter had now been resolved. Mr Ali Noroozi, Inspector-General of Taxation, *Committee Hansard*, Canberra, 24 February 2016, pp. 13, 14.

<sup>76</sup> Mr Greco suggested the rule was essentially a ‘good feature of the system’, and through collaborative effort, the issues had been ‘pretty much ironed out’. *Committee Hansard*, Canberra, 10 February 2016, p. 5.

<sup>77</sup> Name Withheld, *Submission 5*, p. 4.

<sup>78</sup> Name Withheld, *Submission 5*, p. 5.



## Supports to small business

2.47 Promoting small business compliance is a priority for the ATO. The sector is lagging behind all others in tax performance<sup>79</sup> and is also responsible for 65.2 per cent of total collectable debt, more than half of that owed to the ATO.<sup>80</sup>

2.48 Data recorded in the 2015–16 annual report, for instance, indicates that the situation actually grew worse over the reporting period, with advances in small business lodgement of activity statements gained previously reversing over 2015–16,<sup>81</sup> and small business debt increasing by 1.9 per cent over the previous year.<sup>82</sup>

### Early engagement

2.49 The ATO has adopted a policy of systemic ‘early engagement’ to promote voluntary compliance by taxpayers.<sup>83</sup> For the small business community, ATO priorities include:

- Ensuring ATO staff understand small business and their needs, and can access full client profiles to see the full picture;
- Launching the ‘show me what, how, why’ online services and webinars.
- Focusing on and fixing small business ‘irritants (such as though Fix-It Squads to develop small business solutions);
- Streamlining reporting options to provide as simple reporting systems for small business; and
- Providing visibility of all ATO transaction history, risk ratings and third party data for ATO Tax and super affairs.<sup>84</sup>

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<sup>79</sup> ATO, *Tax Commissioner’s Annual Report 2015–16*, Vol. 1, p. 22.

<sup>80</sup> At June 2016. ATO, *Tax Commissioner’s Annual Report 2015–16*, Vol. 1, p. 37.

<sup>81</sup> ATO, *Tax Commissioner’s Annual Report 2015–16*, Vol. 1, p. 22.

<sup>82</sup> ATO, *Tax Commissioner’s Annual Report 2015–16*, Vol. 1, p. 37.

<sup>83</sup> Commissioner’s Forward, ATO, *Submission 1*, p. 3.

<sup>84</sup> ATO, *Submission 1.3*, Attachment: *Supporting Small Business*, p. 7.

- 2.50 Mr Peter Strong, Chief Executive Officer (CEO) of the Council of Small Business of Australia (COSBOA) considered that outmoded software, the nature of technology and the attitudes of ATO staff have been obstacles to timely compliance in the sector.<sup>85</sup> He commended the ATO's responsiveness to these challenges, considering that small business targeted software solutions in e-invoicing, SuperStream, the myGov BAS (Business Activity Statement) lodgements, and more user friendly help lines would decrease debt levels and increase small business efficiency.<sup>86</sup>
- 2.51 CAANZ's submission highlighted the following ATO initiatives as particularly effective for assisting small business compliance:
- Early ATO intervention/contact with the taxpayer
  - Taxpayer "nudge" techniques (based on behavioural science)
  - Re-designed ATO debt correspondence which makes it crystal clear that a debt is owing and what to do about it
  - Online debt repayment plans...
  - An ATO small business cash flow education product to be rolled-out in 2016-17
  - Warnings before more drastic action is taken by the ATO.<sup>87</sup>
- 2.52 Mr Croker, warned, however, that the ATO's assistance needs to be well targeted as small business operators can be overwhelmed by a proliferation of information and tools.<sup>88</sup>
- 2.53 The Australian Taxpayers' Alliance (ATA) also saw risks in proposals for new penalties to promote timely lodgement by small business, which could introduce anomalies, and recommended that the ATO ensure checks and balances are in place to protect taxpayer interests.<sup>89</sup>

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<sup>85</sup> Mr Peter Strong, CEO, Council of Small Business of Australia (COSBOA), *Committee Hansard*, Canberra, 30 November 2016, p. 3.

<sup>86</sup> Mr Strong, COSBOA, *Committee Hansard*, Canberra, 30 November 2016, p. 6.

<sup>87</sup> CAANZ, *Submission 3*, p. 5.

<sup>88</sup> Mr Croker, CAANZ, *Committee Hansard*, Canberra, 23 November 2016, p. 7.

<sup>89</sup> Australian Taxpayers' Alliance (ATA), *Submission 6*, pp. 3–4; and see ATO, 'Proposed Changes to Penalties for Small Business and Individuals—Consultation', October 2016 <lets-

## Single Touch Payroll and e-invoicing

- 2.54 The Single Touch Payroll is a mechanism designed to simplify tax and superannuation payments for business. The Committee was advised that problems with the system as originally introduced have now been addressed through progression of the e-invoicing process in consultations with the ATO, the small business peak COSBOA, and through the work of the Digital Business Council.<sup>90</sup>
- 2.55 COSBOA's Mr Strong, a founding co-chair of the Digital Business Council, considered that the rollout of the e-invoicing system will be a 'win for everybody', as the ATO will have reliable information direct from business, and businesses won't have to review their activity statements for end of year summaries.<sup>91</sup> He explained:

At the moment, if you lodge an invoice, say, with Bunnings and you are small business, you have to retype it and when it comes back you have to retype something else. There is a lot of work. If you only do it every now and then, it is a pain in the neck. That is a common story across big and small, as is that the software will not talk to each other. So e-invoicing means that, no matter what software we are using, it will talk to each other... That will save a lot of time and a lot of mistakes for the small business community.<sup>92</sup>

## SuperStream

- 2.56 The new SuperStream system allows businesses to bundle all their super payment and employee information into one transaction, which is then dispersed to the nominated superannuation fund.<sup>93</sup>
- 2.57 Small employers (those with 19 or fewer employees) were required to make contributions using the SuperStream standard by 30 June 2016. The ATO advised that, overall, 570 000 employers had implemented the SuperStream

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[talk.ato.gov.au/penaltyconsultation/news\\_feed/proposed-changes-to-penalties-for-small-business-and-individuals-consultation](http://talk.ato.gov.au/penaltyconsultation/news_feed/proposed-changes-to-penalties-for-small-business-and-individuals-consultation)> viewed 20 December 2016.

<sup>90</sup> Mr Strong, COSBOA, *Committee Hansard*, Canberra, 30 November 2016, p. 1.

<sup>91</sup> Mr Strong, COSBOA, *Committee Hansard*, Canberra, 30 November 2016, p. 4.

<sup>92</sup> Mr Strong, COSBOA, *Committee Hansard*, Canberra, 30 November 2016, pp. 3–4.

<sup>93</sup> ATO, *Submission 1*, p. 8.

standard by this date, including 70 per cent of small employers. An extended deadline was offered to 28 October 2016 for those that missed the date.<sup>94</sup>

- 2.58 The ATO estimates that SuperStream will deliver substantial savings to business, estimated at \$350 million per annum.<sup>95</sup> However it also recognises that businesses in rural and regional areas may struggle to meet requirements. The ATO reports work with the superannuation industry to develop a solution which will allow current super lodgement methods to convert to an electronic transaction compatible with SuperStream requirements.<sup>96</sup>
- 2.59 Mr Strong commended this work on complimentary solutions to SuperStream as a positive for small business.<sup>97</sup>

## **Managing small business debt**

- 2.60 Discussion during the inquiry focussed on the persistent and increasing volume of small business debt, and the need to manage tax obligations with flexibility to support business sustainability and innovation.
- 2.61 CPA Australia's Mr Drum noted that while small business debt has been a long term issue for the ATO, it has spiked since the Global Financial Crisis. Noting that 'ultimately small business and the inability to pay its debt is a function of liquidity and inability of debtors to pay to each business on time',<sup>98</sup> he recommended that the ATO adopt a cautious approach to small business debt:

...There needs to be a rethink about it [ATO debt collection] because there is that balance that...where you have families that rely on businesses to put food on the table—businesses that employ people and so forth—and, if you try and get that debt and use all available means, you will basically hurt a lot of

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<sup>94</sup> ATO, *Tax Commissioner's Annual Report 2015–16, Vol. 1*, p. 23.

<sup>95</sup> ATO, *Tax Commissioner's Annual Report 2015–16, Vol. 1*, p. 23.

<sup>96</sup> ATO, *Submission 1*, p. 8.

<sup>97</sup> Mr Strong, COSBOA, *Committee Hansard*, Canberra, 30 November 2016, p. 6.

<sup>98</sup> Mr Drum, CPA Australia, *Committee Hansard*, Canberra, 23 November 2016, p. 10.

people in a broader sense in the economy. So I think there needs to be a rethink of that particular strategy.<sup>99</sup>

- 2.62 The ATO says that its new online debt repayment plan arrangements have led to more positive outcomes for small business, with the number of plans entered into increasing by 17.2 per cent on the previous year.<sup>100</sup> The annual report notes that online plans have also been 22.4 per cent more effective collecting debt than through traditional payment arrangements.<sup>101</sup>
- 2.63 However, the CAANZ submission suggested that some chartered accountants considered that the ATO's online debt repayment plans made it too easy to get tax debt payment extensions.<sup>102</sup> The submission called for more extensive policy intervention by Government to support small business compliance and viability.<sup>103</sup>

## ATO guidance – draft rulings

- 2.64 The Committee's report on the 2015 Annual Report recommended that in future, all draft public rulings should cease on a certain date or when they are made redundant by legislation (Recommendation 3).<sup>104</sup>
- 2.65 In its submission, the ATO referred to the results of an internal review of aged draft rulings which found that, in many cases, these were awaiting court outcomes. The ATO did not therefore consider withdrawal of all draft

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<sup>99</sup> Mr Drum, CPA Australia, *Committee Hansard*, Canberra, 23 November 2016, pp. 10–11.

<sup>100</sup> With 950 000 plans offered an online payment arrangements for \$100 000, up from \$50 000 now allowable. See ATO for detail <[www.ato.gov.au/general/paying-the-ato/help-with-paying/](http://www.ato.gov.au/general/paying-the-ato/help-with-paying/)> viewed 5 January 2016.

<sup>101</sup> ATO, *Tax Commissioner's Annual Report 2015–16, Vol. 1*, p. 37.

<sup>102</sup> CAANZ, *Submission 3*, p. 5.

<sup>103</sup> Such as by offering training prior to granting an ABN, changes to upfront PAYG arrangements, agent and bank supervision of credit and debt plans, training and start-up plans for business, and limitation on the number of debt plans, See CAANZ, *Submission 3*, p. 6.

<sup>104</sup> HoR Standing Committee on Tax and Revenue, *2015 Annual Report of the Australian Taxation Office*, First Report, April 2016, p. 30.

rulings after a specified period advisable, considering it could cause 'greater uncertainty' to taxpayers.<sup>105</sup>

- 2.66 The unresolved status of many rulings, however, continued to cause concerns among tax professionals. The CAANZ reiterated its view that there is a need for greater clarity on the status of ATO Interpretative Decisions, and its plans for rejuvenation of older public rulings on important topics.<sup>106</sup> Mr Anathasiou of the Tax Institute commented, 'there are a lot of rulings out there that have not been finalised, which makes tax practice very, very difficult'. However, he also observed:

I think there is a real push by the ATO to deal with all of that old outstanding legacy stuff. The ATO would come up with a draft position and then just leave it in abeyance for a decade. I think that is all changing.<sup>107</sup>

- 2.67 The Australian Taxpayers' Alliance noted that the ATO's Annual Report for 2016 fails to provide advice on the number and timeliness of public rulings and determinations, in contrast to previous years.<sup>108</sup> It submitted that: '...the ATO should be held to a higher standard of excellence in ensuring that public rulings are being released so that tax practitioners and taxpayers are able to access timely information that would be relevant for them as they engage with the services from the ATO'.<sup>109</sup>
- 2.68 The ATO subsequently reported to the Committee that the ATO had issued 69 public rulings (draft and final) and of that 20 were draft public rulings over the 2015–16 reporting period. Further, there had been no formal complaints made to the ATO in relation to draft rulings over the year.<sup>110</sup>

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<sup>105</sup> ATO, *Submission 1*, p. 23.

<sup>106</sup> CAANZ, *Submission 3*, p. 5.

<sup>107</sup> Mr Anathasiou, The Tax Institute, *Committee Hansard*, Canberra, 23 November 2016, p. 8.

<sup>108</sup> Being 92 rulings and determinations in 2011–12; 69 in 2012–13; and 64, with 81 per cent on time, in 2014–15.

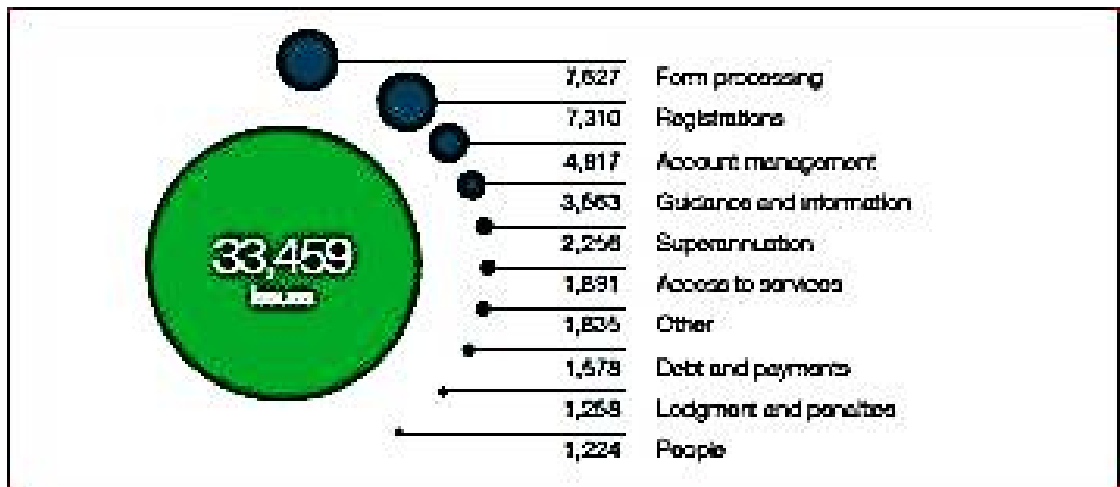
<sup>109</sup> Australian Taxpayers' Alliance, *Submission 6*, p. 2.

<sup>110</sup> ATO, *Submission 1.3*, p. 3.

## Complaints handling and perceptions of fairness

2.69 The ATO's Annual Report records the number of complaints received over 2015–16 as 34 323, or 0.2 per cent of the 17 million income tax returns received. Figure 2.1, below, shows the top ten complaint issues.<sup>111</sup>

**Figure 2.1 ATO's top ten complaint issues for 2015–16**



Source: ATO, *Tax Commissioner's Annual Report 2015–16, Vol.1, p. 85.*

[figure showing top ten areas, from top: form processing registration, account management, guidance and information, superannuation, access to services, other, debt and payments, lodgements and penalties and people]

2.70 As indicated, the two main complaint issues addressed were:

- ATO administration of form processing and account management; and
- Delays associated with the release in January 2015 of the Client Register system.<sup>112</sup>

<sup>111</sup> The total number of complaints cited in the text differs to the number of issues shown on the table because a single complaint may include multiple issues, a complaint issue may not have been captured, and data is not captured for complaints resolved on a first client call. See Notes to Figure 3.2, ATO, *Tax Commissioner's Annual Report 2015–16, Vol. 1, p. 85.*

<sup>112</sup> ATO, *Tax Commissioner's Annual Report 2015–16, Vol. 1, p. 85.*

- 2.71 The Annual Report advises that the overall increase in complaints over the whole of the 2015–16 tax year, was attributable to these two main issues, with 61 per cent of complaints being received in the first half of the financial year.<sup>113</sup> The Report goes on to note that while overall performance targets for returns for the period had been exceeded, ‘improved digital services ha[d] increased expectations with regard to the time frames for refund processing’.<sup>114</sup> The ATO later advised that processing issues had been resolved by tax time 2016, when complaint levels dropped well below those received over July to October in 2015.<sup>115</sup>
- 2.72 Structural reform within the ATO’s dispute resolution process also brought a new capacity for timely resolution of disputes.<sup>116</sup> The Commissioner highlighted features of the new process, which included an increased use of alternative dispute resolution services, new settlement guidelines and independent ATO facilitators.<sup>117</sup> The Commissioner further advised:
- The changes can also be noticed in the interactions we have with taxpayers, for example responding to inquiries with ‘natural conversations’ not just scripted answers, and picking up the phone in the early stages of a dispute to see if a simple mistake or misunderstanding exists. Our early engagement and focus on helping people get things right is having a positive impact on the time taken and costs incurred to resolve matters.<sup>118</sup>
- 2.73 The ATO recorded the practical effect of these reforms for the 2015–16 reporting period:

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<sup>113</sup> ATO, *Tax Commissioner’s Annual Report 2015–16, Vol. 1*, p. 85.

<sup>114</sup> In response, the ATO reduced of the overall processing time for standard income tax returns by one day by Tax Time 2016. ATO, *Tax Commissioner’s Annual Report 2015–16, Vol. 1*, p. 85.

<sup>115</sup> Senate Supplementary Budget Estimates 2016, ATO, Answer to Questions on Notice no. 252, Senate Economic Legislation Committee, lodged 9 December 2016.

<sup>116</sup> From 1 July 2015 the objections functions for complaints moved from the Client Engagement Group into the ATO Review and Law Design and Practice Group’s Dispute Resolution Business line. See ATO, *Tax Commissioner’s Annual Report 2015–16, Vol. 1*, p. 47.

<sup>117</sup> ‘Commissioner’s Review’, ATO, *Tax Commissioner’s Annual Report 2015–16, Vol. 1*, p. ix.

<sup>118</sup> Commissioner’s Forward, ATO, *Submission 1*, p. 3.



- the number of ATO litigation cases decreased significantly with increases in successful outcomes for the cases pursued;<sup>119</sup> and
- the number of appeals made through the Administrative Appeals Tribunal dropped from 533 cases over 2014–15 to 396 in 2015–16.<sup>120</sup>

## Fairness indicators

- 2.74 Community perceptions of fairness measures are used to assess the ATO's performance in managing objections, disputes and complaints handling.<sup>121</sup>
- 2.75 During the previous reporting period, the ATO developed a 60 per cent Corporate Key Performance Indicator on fairness perceptions with a view to improving client fairness perceptions.<sup>122</sup> Over 2015–16, fairness assessments of performance were conducted on four measures: distributive (the outcome); procedural (the process); informational (information aspects); and interpersonal fairness.<sup>123</sup>
- 2.76 The Australian Taxpayers' Alliance welcomed the ATO's commitments to fairness in disputes, noting its inclusion as a performance measure for integrity in the ATO Corporate Plan 2015–2019. However, the ATA submitted that the 60 per cent target for 2016 should be raised to 75 per cent by 2019, stating:

The ATA recognizes that there are lower perceptions of fairness by the taxpayer when a decision favours the ATO. A plan should be set in place to improve this and uphold the public confidence in the dispute resolution process. Realistic expectations for taxpayers need to be met while also ensuring that there are transparency and the rationale is explained so taxpayers can understand why a decision was not ruled in their favour...taxpayers may feel out of place when raising their dispute with a

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<sup>119</sup> Success rate of 85 per cent, with 77 per cent of cases fully favourable to the ATO and 8 per cent partly favourable. Commissioner's Review, ATO, *Tax Commissioner's Annual Report 2015–16*, Vol. 1, p. ix.

<sup>120</sup> ATO *Submission 1*, p. 25.

<sup>121</sup> ATO, *Tax Commissioner's Annual Report 2015–16*, Vol.1, p. 47.

<sup>122</sup> ATO *Submission 1*, p. 25

<sup>123</sup> ATO *Submission 1*, p. 26.

government body such as the ATO and be overwhelmed by the process, the subsequent jargon and handling of their objection.<sup>124</sup>

## The role of the Inspector-General of Taxation

- 2.77 The Inspector-General of Taxation took on the complaints handling role for tax in 2014. Since the role took effect in May 2015, the Inspector-General has dealt with the more serious and difficult tax complaints.<sup>125</sup>
- 2.78 At February 2016, a total of 1 779 cases were being dealt with by his Office.<sup>126</sup> By the close of the financial year, 2 148 complaints had been received of which over 95 per cent were processed and finalised within the same period.<sup>127</sup> At hearings, the Inspector-General said the increase was a positive, being reflective of the public's growing awareness of his Office's role as one of the 'checks and balances' in the tax disputes resolution system.<sup>128</sup>
- 2.79 The most common issue of complaint to the Inspector-General's Office is the ATO's debt collection action, which accounts for 23 per cent of all issues raised during 2015–16. The Inspector-General explained that the major catalyst to complaint is the debtor's failure to understand his or her tax obligations:
- In a typical example, of a re-raising of a debt by the ATO, the taxpayer did not understand the reasons why his debt had been re-raised and was concerned that he was not notified by the ATO of its decision to re-raise the debt...My staff engaged with the relevant ATO officers on this issue and focused on ensuring that the taxpayer received an explanation regarding why his debt was re-raised and why he had not received notification from the ATO.<sup>129</sup>
- 2.80 In the 2104–15 Annual Report review the Committee raised the issue of lack of clarity in relation to re-raising of debt collection letters issued by the

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<sup>124</sup> Australian Taxpayers' Alliance, *Submission 6*, p. 2

<sup>125</sup> Inspector-General of Taxation, *Submission 7*.

<sup>126</sup> Mr Noroozi, Inspector-General of Taxation, *Committee Hansard*, Canberra, 24 February 2016, p. 2.

<sup>127</sup> Mr Naroozi, Inspector-General of Taxation, Answers to Questions on Notice in *Submission 7.1*, p. 3.

<sup>128</sup> Mr Naroozi, Inspector-General of Taxation, *Committee Hansard*, Canberra, 30 November 2016, p. 17.

<sup>129</sup> Inspector-General of Taxation, *Submission 7.1*, p. 3.

ATO.<sup>130</sup> The Committee was subsequently told improvements had been made and was issued with a copy of the revised letter.<sup>131</sup> In his review of the ATO's debt collection practices (July 2015), the Inspector-General noted that the ATO's revised debt letters had been updated to 'incorporate behavioural economics principles and to make the letters easier for taxpayers to understand'.<sup>132</sup>

- 2.81 Deputy Inspector Mr Andrew McLoughlin suggested that part of the problem is the ATO's need to get debt communication out quickly.<sup>133</sup> As already noted, the automated debt letter process has raised new concerns in this regard, given the onus is on taxpayers to provide information if data matched discrepancies are indicated.<sup>134</sup> The Australian Taxpayers' Alliance observed:

When a taxpayer interacts with the ATO and raises an issue through the dispute resolution processes, the current culture at the ATO suggests that taxpayers are considered guilty until they are proven to be innocent.<sup>135</sup>

- 2.82 The Alliance argued that the ATO should bear the legal burden of proving any allegation by the taxpayer to ensure that taxpayers are not being taxed 'merely because of an allegation of fraud and evasion'.<sup>136</sup>
- 2.83 Tax agent Richard Wytkin supported this view, noting that neither the Inspector-General of Taxation nor the Ombudsman are empowered 'to conduct a merit review' on an ATO decision.<sup>137</sup> Referring to the case of a client who had been subject to a six year audit period (rather than the mandated two year period), Mr Wytkin advised that a Freedom of

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<sup>130</sup> Ms Bronwyn Bishop MP, *Committee Hansard*, 24 February 2016, pp. 6–7.

<sup>131</sup> ATO, *Submission 3.1*, to the Committee's 2015 ATO Annual Report review.

<sup>132</sup> Australian Government, *Debt Collection: a Report to the Assistant Treasurer*, Inspector-General of Taxation, July 2015, p. 65.

<sup>133</sup> Mr McLoughlin, Deputy-Inspector of Taxation, *Committee Hansard*, Canberra, 30 November 2016, p. 17.

<sup>134</sup> ATO, *Submission 1*, p. 12.

<sup>135</sup> Australian Taxpayers' Alliance, *Submission 6*, p. 4.

<sup>136</sup> Australian Taxpayers' Alliance, *Submission 6*, p. 4.

<sup>137</sup> Mr Richard Wytkin, *Submission 4.1*, pp. 1–2.

Information (FOI ) request had not revealed the basis of the ATO's decision, nor why this was 'fair and reasonable'.<sup>138</sup> He asked why the ATO was not obliged to respond to the Inspector-General's finding on the matter (on 29 October 2015), that: '...the ATO should have, in our view and as a matter of fairness, limited its review and its requirement to the two-year period leading to [the client's] employment in Australia'.<sup>139</sup>

- 2.84 The Inspector-General advised that while his determinations are not binding on the ATO, 'hopefully [they are] persuasive' if the Tax Office perceives a 'need to change their course' on a particular issue.<sup>140</sup> Deputy Inspector McLoughlin explained the value of the Office's role in ATO dispute resolution, which:

...provides us with a healthy opportunity to make sure that people who would otherwise be disaffected can be picked back up—in a sense, not re-engage with the system, but to make sure that we do not get ill-will or bad-will being created'.<sup>141</sup>

## The tax and revenue gap

- 2.85 The ATO is the Australian Government's principal revenue collection entity. Over 2016–17, the ATO has budgeted expenses of \$21.5 billion to deliver its 24 programs in service to this single outcome. Its budgeted taxation revenue for the period is \$372.2 billion. A breakdown of sources of this expected revenue is shown below.<sup>142</sup>

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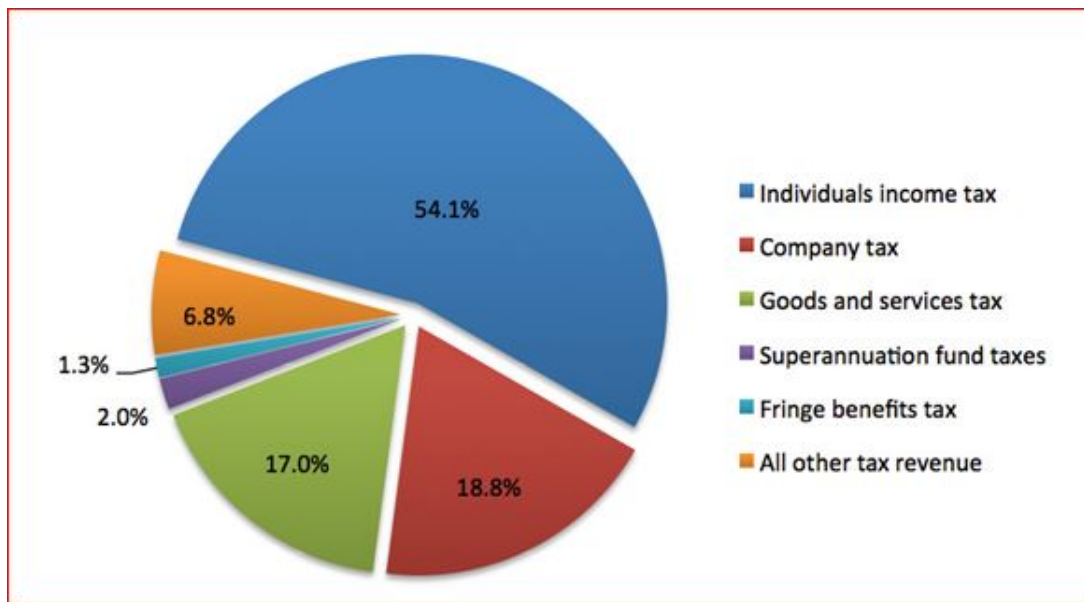
<sup>138</sup> Mr Richard Wytkin, *Submission 4*, p. 2.

<sup>139</sup> Mr Richard Wytkin, *Submission 4*, pp. 1–2.

<sup>140</sup> Mr Naroozi, Inspector-General of Taxation, *Committee Hansard*, Canberra, 30 November 2016, p. 21.

<sup>141</sup> Mr McLoughlin, Deputy-Inspector of Taxation, *Committee Hansard*, Canberra, 30 November 2016, p. 17.

<sup>142</sup> Sourced from the ATO Overview, Annual Audit Work Program, Australian National Audit Office (ANAO) <[www.anao.gov.au/work-program/portfolio/australian-taxation-office/portfolio-overview](http://www.anao.gov.au/work-program/portfolio/australian-taxation-office/portfolio-overview)> viewed 21 February 2017.

**Figure 2.2 Revenue to be collected by the ATO 2016–17**

Source: Estimate—Australian National Audit Office (ANAO) analysis of Budget Paper No. 1, 2016-17 (pp. 4–19) and Portfolio Budget Statement 2016–17 Paper No. 1.16.

[Pie graph showing percentage of Individual's revenue contribution of 54.1 %, Company tax 18.8%, GST 17%, Superannuation fund 2%, Fringe Benefits 1.3%, and all other revenue 6%]

## Assessing the tax gap

2.86 The ATO's definition of the tax or revenue gap is an 'estimate of the difference between what the ATO collects and the amount that would have been collected if every taxpayer was fully compliant'.<sup>143</sup> Estimating this gap, as the ATO Annual Report indicates, is a challenge:

Tax gaps are in effect, about measuring what is not visible—what people have not told us about their compliance, whether through misunderstanding, by choice or by taking a tax position that differs from the ATO view of the law.<sup>144</sup>

2.87 At hearings, Deputy Commissioner, Small Business, Mr Steve Vesperman stated that there is a lack of empirical evidence to reliably estimate revenue

<sup>143</sup> ATO, *Tax Commissioner's Annual Report 2015–16, Vol.1*, p. 43.

<sup>144</sup> ATO, *Tax Commissioner's Annual Report 2015–16, Vol.1*, p. 43.

gaps.<sup>145</sup> Mr Jeremy Hirschorn, Acting Second Commissioner, Client Engagement, noted that reportage on the beer excise tax gap had been revoked due to problems with the data methodology. Work was also 'ongoing' to develop a 'credible and reliable' method to assess the superannuation gap.<sup>146</sup>

2.88 The ATO has also made commitments to develop a draft measurement framework to assist evaluation of revenue loss from non-compliance in the cash economy, in keeping with Auditor-General's recommendation in this area.<sup>147</sup> The ATO also advised that performance indicators and targets for these measures are being formulated for finalisation in early 2017.<sup>148</sup> As part of the process, the ATO has determined to re-segment revenue sectors to distinctly assess the gap for individuals (not business) as against small business and medium business, in addition to that on large business and high wealth individuals. This would aid evaluation of the drivers of non-compliance in each sector and help target communications to address the problem.<sup>149</sup>

2.89 The ATO emphasised, however, that in estimation of the tax gap and shadow economy for these different client sectors, data would only be released when 'sufficiently creditable', rather than on an annual reporting basis.<sup>150</sup>

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<sup>145</sup> Mr Steve Vesperman, Deputy Commissioner, Small Business, ATO, *Committee Hansard*, Canberra, 30 November 2016, p. 9.

<sup>146</sup> Mr Jeremy Hirschorn, Acting Second Commissioner, Client Engagement, ATO, *Committee Hansard*, Canberra, 30 November 2016, p.15; see also ATO, *Submission 1*, beer excise and duty estimates were 'withdrawn due to identified data issues', p. 28.

<sup>147</sup> Specifically Personal Services, See Recommendation 1 – ATO supported, in the Auditor-General, 'Strategies and Activities to address the Cash and Hidden Economy, Australian Taxation Office', *ANAO Report No.27 2015–16, Performance Audit, Australian National Audit Office*, 2016, p. 10.

<sup>148</sup> ATO, *Submission 1*, p. 15.

<sup>149</sup> ATO, *Submission 1*, pp. 29–30.

<sup>150</sup> ATO, *Submission 1*, p. 30.

## *Unrecoverable debt*

2.90 Unrecoverable debt contributes to the size of the revenue gap. In answer to a Question on Notice, the Inspector-General of Taxation explained:

... the ATO generally categorises debt as ‘written off’ when it is either irrecoverable at law (that is, a ‘winding-up’ through bankruptcy or receivership or legal settlement including compromise) or uneconomic to pursue in its annual reporting. A debt which is irrecoverable at law is effectively extinguished legally and cannot be re-raised against the taxpayer.<sup>151</sup>

2.91 The Inspector-General noted that the largest ATO write off of debt occurred in the 2012–13 financial year. As highlighted in the table below, the amount was \$4.6 billion, which was a \$2 billion dollar increase on the previous financial years and has been larger than any subsequent write off.

**Figure 2.3 ATO Annual debt write-off over 2010–16**

Annual Report	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
Value of debt not pursued (\$Bn)	1.7	3.8	2.6	4.6	3.4	1.4	1.7
Increase / (decrease) on prior year (\$Bn)	N/A	2.1	(1.2)	2.0	(1.2)	(2.0)	0.3

Source: ATO data cited in *Inspector-General of Taxation, Submission 7.1, p. 2.*

[Table showing relative debt unrecovered over 2010 to 2016 with 1.7 per cent of debt not pursued in 2015–16]

2.92 The Inspector-General also drew the Committee’s attention to the fact that the 2012–13 and 2013–14 financial years were the only years in which the ATO provided a breakdown in its annual reports of these debts in primary terms.<sup>152</sup> The Inspector-General identified a need for more comprehensive reportage, including a reconciliation between the impairment of the taxation receivables line item and the amount of debt written off as irrecoverable at law or uneconomical to pursue.<sup>153</sup>

<sup>151</sup> Inspector-General of Taxation, *Submission 7.1*, p. 1.

<sup>152</sup> Inspector-General of Taxation, *Submission 7.1*, p. 2.

<sup>153</sup> Inspector-General of Taxation, *Submission 7.1*, p. 2.

## Reducing the cash and hidden economy

2.93 The ATO's commitment to reduce the cash economy is part of its broad objective to increase willing compliance across the whole Australian community. The Tax Commissioner stated:

Australians want to know we are doing what we can to level the playing field for businesses – with multinationals, the sharing economy, the cash economy and other risk areas. We will continue to use more sources and more sophisticated intelligence to target compliance action on those who warrant such attention.<sup>154</sup>

2.94 The ATO's strategy to reduce the cash and hidden economy has been couched in terms of 'protecting honest businesses from unfair competition in industries where cash economy behaviours have been identified'.<sup>155</sup> As part of this work, the ATO surveyed over 127 000 businesses in industries most at risk, with restaurants and cafes, hair and beauty, and building and construction sectors identified as the top three cash economy operators in 2015–16. Further analysis is to follow in emerging 'sharing' economies, such as transport services, accommodation and personal services.<sup>156</sup>

2.95 Deputy Commissioner Vesperman explained that the ATO's modus operandi is now to ascertain the drivers of non-compliance, rather than focus purely on end enforcement action:

On our interaction and engagement, each time we do a review or an audit we look at the best approach in understanding what the driver was and then responding to that to lock in forward compliance behaviour. That is a much better outcome than looking backwards all the time. That is how we go about our business.<sup>157</sup>

2.96 CAANZ suggested that the Committee may wish to investigate whether the ATO has the legislative and administrative tools it needs to adequately

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<sup>154</sup> 'Commissioner's Review', ATO, *Tax Commissioner's Annual Report 2015–16, Vol. 1*, p. x.

<sup>155</sup> ATO, *Submission 1*, p. 14.

<sup>156</sup> ATO, *Submission 1*, pp. 15–16.

<sup>157</sup> Mr Vesperman, ATO, *Committee Hansard*, Canberra, 30 November 2016, p. 10.



address this difficult area of tax administration. Possible areas for exploration include:

- The use of non-tax sanctions (whereby other legal entitlements or commercial benefits are jeopardised by non-compliance with the tax law as part of a broader social contract)
- The issue of tax compliance certificate as a pre-condition for the taxpayer applying for a government tender
- The use of tax bonds as a condition of obtaining an Australian Business Numbers for repeat cash economy offenders.<sup>158</sup>

2.97 Mr Strong argued that education is needed to change social attitudes, so that the perpetrators recognise the broader impact on community revenue and services.<sup>159</sup> He also considered advances in payments systems and analytic technologies would simultaneously reduce opportunities for cash interactions and increase co-operation with the ATO.<sup>160</sup>

## Large business and multinational tax avoidance

2.98 The Commissioner has committed the ATO to take ‘a well-balanced approach across the different market segments to increasing levels of participation in the tax and super systems’.<sup>161</sup> This includes work implementing the Multinational Anti-Avoidance Law (MAAL), through the Tax Avoidance and the Serious Financial Crimes Task Force, and on the OECD’s Base Erosion and Profit Shifting (BEPS) action plan and the Joint International Taskforce on Shared Intelligence project on the Panama Papers.<sup>162</sup>

2.99 In evidence on the integrity of the overall tax system, tax agents raised the implications of the Panama Paper revelations to call for greater transparency and sharing of tax information. The Tax Institute’s Mr Anathasiou stated:

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<sup>158</sup> CAANZ, *Submission 3*, p. 4.

<sup>159</sup> Mr Strong, COSBOA, *Committee Hansard*, Canberra, 30 November 2016, p. 5.

<sup>160</sup> Mr Strong, COSBOA, *Committee Hansard*, Canberra, 30 November 2016, pp. 4, 7.

<sup>161</sup> ATO, *Submission 1*, p. 4.

<sup>162</sup> ATO, *Submission 1*, p. 4.

...where information is available it should be used to ensure that everybody pays their fair share of tax. It is that issue about big data—making sure that whatever information is out there in discrete areas, discrete points or discrete transactions will be able to be crunched and brought together so we are in a position to allow the ATO to get a clear picture of everybody's tax position. We also need to make the whole process easier because, if the process becomes easier, compliance with the law becomes easier and the cost of tax administration and tax collection reduces and the system works properly.<sup>163</sup>

2.100 Commissioner Jordan advised that there is unprecedented global collaboration and action in addressing high wealth and multinational tax avoidance:

I chair the Joint International Taskforce on Shared Intelligence and Collaboration, JITSIC, and that network has the Panama papers as a significant project right now. And of course we are doing a lot of work on the multinational anti-avoidance law that came in in January this year. All of that work, I think, provides a really good signal to the community that we have both got the tools that we need and we are doing what we can to level the playing field and ensure that people and companies pay the right amount of tax.<sup>164</sup>

2.101 At the national level, the ATO Annual Report 2015–16 anticipates progress in the wake of the favourable Federal Court decision for the ATO in relation to the matter of *Chevron Australia Holdings Pty Ltd v the Commissioner of Taxation* in December 2016. The decision confirmed the Commissioner's powers under the existing transfer pricing provisions to deal with profit sharing using cross border related-party financing to reduce taxes payable in Australia.<sup>165</sup> The Government's recent introduction of the Diverted Profits Tax Bill, with complementary legislation to increasing penalties for large business non-lodgement and harmonisation of transfer pricing laws, aims to

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<sup>163</sup> Mr Athanasiou, The Tax Institute, *Committee Hansard*, Canberra, 23 November 2016, p. 9.

<sup>164</sup> Commissioner Jordan, *Committee Hansard*, Canberra, 30 November 2016, p. 8.

<sup>165</sup> *Chevron Australia Holdings Pty Ltd v the Commissioner of Taxation (no.4)* [2015] FCA 1092, see discussion ATO, *Tax Commissioner's Annual Report 2015–16, Vol.1*, p. 29.

further empower the ATO to apply Australia's anti-avoidance provisions and penalties.<sup>166</sup>

2.102 However, questioning during this review on the ATO's litigation on the Bell Group matter, in which the Western Australian Government introduced legislation to facilitate the dispersal of debts and end litigation on \$1.7 billion funds owed to creditors by Alan Bond's Bell Group of Companies since the 1990s,<sup>167</sup> indicates that large business revenue collection and tax enforcement has potential to be a highly politicised and contested area of constitutional law and tax administration.<sup>168</sup>

## ATO performance benchmarking

2.103 The ATO participates in a range of benchmarking and research initiatives in relation to information technology (IT) performance, by:

- Participation in the annual Whole of Government Cross Agency ICT Benchmark Study, leading research memberships (Gartner Research, Forrester Research, Ovum Research, and Massachusetts Institute of Technology [MIT] Research) and an international forum of tax agencies;
- Reviewing ATO IT infrastructure to ensure it is fit for purpose and all outsourced infrastructure to better understand modernisation requirements;

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<sup>166</sup> Into Parliament on 9 February 2017. Complementary legislation, the Combating Multinational Tax Avoidance Bill 2017, will substantially increase penalties for large multinationals where they fail to lodge tax documents on time or make false or misleading statements to the ATO. An additional measure will harmonise Australia's transfer pricing laws with the 2015 OECD transfer pricing recommendations. The Hon Scott Morrison MP, Treasurer, 'Turnbull Government continues Crackdown on Multinational Tax Avoiders', *Media Release*, 9 February 2017 <[www.ministers.treasury.gov.au/media-release/009-2017/](http://www.ministers.treasury.gov.au/media-release/009-2017/)> viewed 10 February 2017.

<sup>167</sup> See the Hon Mike Nahan, (former) Minister for Energy, Citizenship and Multicultural Affairs, 'Legislation passed to finalise Bell Group case Legislation', *Media Release*, 27 November 2016 <[www.mediastatements.wa.gov.au/Pages/Barnett/2015/11/Legislation-passed-to-finalise-Bell-Group-case.aspx](http://www.mediastatements.wa.gov.au/Pages/Barnett/2015/11/Legislation-passed-to-finalise-Bell-Group-case.aspx)> viewed 10 February 2017.

<sup>168</sup> See *Bell Group N.V. (in liquidation) & ors v State of WA & ors* [2016] HC A21, in which the High Court unanimously held that the Bell Act is invalid in its entirety 'because of Section 109 inconsistency with Commonwealth taxation laws'. See ATO, *Tax Commissioner's Annual Report 2015-16, Vol.1*, Appendix 4: Strategic Litigation, p. 107, and refer to Answers to Questions on Notice in ATO, *Submissions 1.2, passim*, and 1.3, p. 1.

- Conducting industry comparison through informal talks with similar scale IT organisations in Australia, including the major banks.<sup>169</sup>

2.104 The Committee's terms of enquiry invite information on the benchmarking of new ATO IT systems against that of banks and tax agencies overseas. The ATO's submission provides:

Due to the differing nature of business operations, it is difficult to directly compare IT performance between organisations. When compared to other similar size Commonwealth government agencies, the ATO performs well, with no significant performance variations.

Specific quantitative IT benchmark studies have not been recently conducted against Australian banks or overseas tax agencies. The range of research available to the ATO through its ICT research body memberships is able to meet ATO requirements for industry comparison.<sup>170</sup>

2.105 The ATO reports that this involvement in research memberships allows for an 'informal comparison' between international tax agencies.<sup>171</sup> The ATO is also examining international methodologies to promote broader tax compliance through pre-lodgement engagement and has engaged an international expert to review wider revenue effect estimation approaches.<sup>172</sup>

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<sup>169</sup> ATO, *Submission 1*, p. 32.

<sup>170</sup> ATO, *Submission 1*, p. 32.

<sup>171</sup> ATO, *Submission 1*, p. 32.

<sup>172</sup> ATO, *Submission 1*, p. 31.